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GAMING LAW UPDATES: TAMIL NADU PROMULGATES ORDINANCE TO BAN ONLINE GAMING AND ASCI INTRODUCES GUIDELINES TO MAKE REAL MONEY GAMING ADVERTISING MORE RESPONSIBLE

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Tamil Nadu promulgates ordinance to ban online gaming

Following the footsteps of Telangana and Andhra Pradesh (refer to our [Ergo](#)), the state of Tamil Nadu has also amended its laws to restrict online gaming within its territory. The Honourable Governor of Tamil Nadu promulgated the Tamil Nadu Gaming and Police Laws (Amendment) Ordinance 2020 on 20 November 2020 (Ref: Tamil Nadu Ordinance Number 11 of 2020) (Ordinance). The Ordinance amends the Tamil Nadu Gaming Act, 1930 (TN Gaming Act) and extends its territorial scope to cover the entire state of Tamil Nadu. Gaming related provisions of the Chennai City Police Act, 1888 and the Tamil Nadu District Police Act, 1859 are no more applicable in the State of Tamil Nadu.

The Ordinance comes in the wake of the observations of the Madras High Court regarding the addictive nature of online games and its negative effect on the masses. In *D Siluvai Venance v State* (Ref: Madras High Court - CrI O.P. (MD) No. 6568 of 2020), the Madras High Court sought to address the negative effect of online gaming by resolving the regulatory void in the online and virtual gaming space (refer to our [Ergo](#)). Similarly, in *Mohammed Rizvi v Union of India* (Ref: Madras High Court - W.P. (MD) No. 15231 of 2020), it has been brought to the notice of the Madras High Court that members of the public end up incurring debts in connection with online gambling activities and that there are instances of people dying by suicide when unable to repay these debts. Given the number of deaths, the court indicated that the state government takes appropriate, adequate, and immediate measures, including bringing legislation, to prohibit or regulate online gambling. The Ordinance, as mentioned in its explanatory statement, is also promulgated in this backdrop.

The Ordinance has made the following key changes to the TN Gaming Act:

- Before the Ordinance, the TN Gaming Act prohibited any person from opening, keeping or using or allowing to use a 'common gaming house' (which covered physical premises like a house, tent, enclosures, rooms, vehicles, vessels, etc), where 'instruments of gaming' are kept or used. Pursuant to the Ordinance, a 'cyber-cafe' is now specifically included within the scope of a common gaming house;
- Instruments of gaming earlier only included any articles used or intended to be used as a subject or means of gaming. The definition has now been expanded to specifically include items such as cards, dice, gaming table or cloth, board,

computers, computer system, computer network, computer resource, any communication device, or any other article used or intended to be used as a subject or means of gaming. It also includes electronic records that are used as registers or records or evidence of any gaming. Further, instruments of gaming include proceeds of any 'gaming', including any online transfer of funds or transactions;

- The definition of gaming has been expanded to include wagering and betting in cyberspace;
- A new provision has been introduced to address offences by companies. In case of offences by companies, the company, and any persons responsible for the conduct of the business of the company will be deemed to be guilty and liable for punishment unless such person can prove that the contravention took place without his / her knowledge and that they exercised all due diligence to prevent such contravention. Further, if an offence is committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect of any director, manager, secretary or any other officer of the company, such director, manager, secretary or any other officer will be deemed guilty of that offence;
- Penalties for contravention have been increased. Anyone found guilty of operating a common gaming house could be liable for up to 2 (Two) years imprisonment and / or a fine of up to INR 10,000 (Indian Rupees Ten thousand). Further, anyone found guilty of gaming in a common gaming house could be liable for up to 6 (Six) months imprisonment and / or a fine of up to INR 5,000 (Indian Rupees Five Thousand); and
- The Ordinance introduces a new offence of wagering and betting in cyberspace. Under this provision, if any person is found guilty of wagering or betting in cyberspace using computers, computer system, computer network, computer resource, any communication device or any other instrument of gaming, by playing 'rummy', 'poker' or 'any other game', then such person will be liable for up to 2 (Two) years imprisonment and / or fine of up to INR 10,000 (Indian Rupees Ten thousand). Also, for this purpose, wagering or betting is deemed to include collection or soliciting of bets, and the receipt or distribution of winnings or prizes, including through electronic transfer of funds.

However, interestingly, the exemption of 'games of mere skill' has been retained in the TN Gaming Act. In fact, this exemption has been extended to the aforesaid prohibition on wagering or betting in cyberspace using computers, computer systems, computer networks, computer resources, any communication device, or any other instrument of gaming, by playing 'rummy', 'poker', or 'any other game'.

Unlike in the case of Telangana and Andhra Pradesh, the Ordinance does not put a blanket ban on offering online games. Online games involving skill continue to be exempted from the application of the restrictions under the TN Gaming Act.

Having said that, while the Ordinance seeks to prohibit online real money games such as rummy and poker, the prohibition does not apply to games of mere skill. Rummy and poker are permitted games under the prevailing legal framework. The Honourable Supreme Court of India has held in *State of Andhra Pradesh v K Satyanarayana* (Ref: 1968 AIR 825) that rummy is a game of skill. Similarly, poker is permitted in West Bengal, Sikkim, Nagaland, Goa, and Daman and Diu (by legislation) and Karnataka (by judicial precedent). This results in further confusion in an industry already marred by legal multiplicity, confusions, and uncertainties. We hope that this confusion will be cleared

by the Tamil Nadu Legislative Assembly once it is in session and online games involving skill will be permitted. The Assembly is required to approve the Ordinance, with or without changes, within six weeks of reassembling pursuant to Article 213 of the Constitution of India, failing which the Ordinance will cease to be in force.

ASCI introduces guidelines to make real money gaming advertising safer and more responsible

One of the frequent complaints against real money gaming (RMG) activities is the way they are advertised to the common public. The advertisements occasionally create a perception that such games may become a source of income, livelihood, or profits as opposed to being a source of entertainment. This creates behavioural issues among the users of online gaming portals. Against this backdrop, the Advertising and Standards Council of India (ASCI) has on 24 November 2020 published guidelines around advertisements pertaining to RMG. These guidelines will be effective from 15 December 2020.

ASCI is a voluntary self-regulation organisation established in 1985. It provides self-regulation in advertising to protect the interest of consumers and ensure that advertisements are legal, decent, honest, truthful, and not hazardous or harmful. It is important to note that ASCI is not a government, quasi-government, or a regulatory body. Its members are usually bound by its rulings and while these are not strictly enforceable, the members are contractually bound. ASCI's guidelines are also incorporated by reference, among others, in the Cable Television Networks Rules, 1994.

The following guidelines have been provided to ensure safe and responsible advertising regarding RMG:

- Advertisements must neither depict nor suggest that persons less than 18 years of age can play or plays online RMG;
- All online RMG advertisements in print / static form must carry a disclaimer reading "The game involves an element of financial risk and may be addictive. Please play responsibly and at your own risk". Such disclaimer should (a) occupy at least 20 % space in the advertisement, (b) be in the same language as the advertisement, (c) be in the same font as the advertisement or in sans serif (not in italics), (d) be along the natural reading direction of the advertisement, and (e) be in contrast with the background, etc;
- All online RMG advertisements in audio / video form must carry a disclaimer at a normal speaking pace at the end of the advertisement stating that "the game involves an element of financial risk and may be addictive. Please play responsibly and at your own risk". Further, it must be in the same language as the advertisement;
- For an audio-visual medium, the disclaimer must be in both formats and comply with the guidelines;
- The advertisement must not represent online RMG as an income opportunity or an alternative employment option; and
- The advertisement must not suggest that an individual involved in online RMG is more successful as compared to other people.

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The risk of irresponsible behaviour by users of RMG portals is real. The industry suffers from the perception of harbingering irresponsible behaviour and being a social evil. The introduction of guidelines by a self-regulatory body such as ASCI to make advertising of online RMG safe and responsible is a crucial first step towards a responsible gaming culture.

- *Surbhi Kejriwal (Partner), Rishabh Bharadwaj (Partner) and Abhishek Rao (Associate)*

For any queries please contact: editors@khaitanco.com

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Mumbai

One Indiabulls Centre, 13th Floor
Tower 1 841, Senapati Bapat Marg
Mumbai 400 013, India

T: +91 22 6636 5000
E: mumbai@khaitanco.com

New Delhi

Ashoka Estate, 12th Floor
24 Barakhamba Road
New Delhi 110 001, India

T: +91 11 4151 5454
E: delhi@khaitanco.com

Bengaluru

Simal, 2nd Floor
7/1, Ulsoor Road
Bengaluru 560 042, India

T: +91 80 4339 7000
E: bengaluru@khaitanco.com

Kolkata

Emerald House
1 B Old Post Office Street
Kolkata 700 001, India

T: +91 33 2248 7000
E: kolkata@khaitanco.com